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Michaela Kohut

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EXAMINER

NIELSEN, THOR B

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/830,001	Applicant(s) KOHUT ET AL.
	Examiner THOR NIELSEN	Art Unit 1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 and 40-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 and 40-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Examination

In response to Applicant's request dated May 30, 2011, for clarification of the Non-Final Office Action of January 31, 2011, the examiner here issues a revised non-final rejection of the claims. While the Applicant is correct that the previous Action could have been clearer, the Applicant has correctly interpreted the basis of the rejection, which suggests that the Action was not fatally ambiguous. The examiner further notes that the Applicant could have availed itself to telephone with a request for clarification, but choose not to do so. Thus, although it is would not have been unreasonable to continue with prosecution, the instant Action is provided to clarify the record.

In a Reply dated April 20, 2010, to an Action mailed on December 21, 2009, Applicant traversed all rejections. Applicant did not include a current listing of claims in the Reply. The examiner therefore continues to examine the claims dated October 27, 2008. Detailed comments on the traversal are presented below.

Status of Claims

Claims 1-37 and 40-48 are under examination in the application.

Claim 1 recites:

1. A cosmetic or dermatological cleansing emulsion comprising:
 - (a) from 2 % to about 17 % by weight of at least one of sodium laureth sulfate and sodium myreth sulfate;
 - (b) from about 0.20 % to about 0.74 % by weight of one or more polyacrylates selected from anionic homopolymers and anionic copolymers of at least one of acrylic acid, an alkylated acrylic acid and esters thereof;
 - (c) from 42 % to about 51% by weight of an oil phase comprising
 - (i) from about 25 % to about 50 % by weight of a paraffin oil,
 - (ii) from about 0.5 % to about 25 % by weight of one or more oils having a polarity of from about 5 to about 50 mN/m;

the emulsion having a viscosity of from about 500 to about 3,500 mPa s at 100 s⁻¹.

Claims 2-27, 36, 45, 40-44, 47, and 48 depend directly or indirectly from claim 1

Claim 28 recites:

28. A cosmetic or dermatological cleansing emulsion comprising:

- (a) from about 5 % to about 10 % by weight of at least one of sodium laureth sulfate and sodium myreth sulfate;
 - (b) from about 0.30 % to about 0.70 % by weight of one or more polyacrylates selected from anionic homopolymers and anionic copolymers of at least one of acrylic acid, an alkylated acrylic acid and esters thereof;
 - (c) from about 43 % to about 46 % by weight of an oil phase comprising
 - (i) from about 30 % to about 45 % by weight of a paraffin oil,
 - (ii) from about 5 % to about 20 % by weight of one or more oils having a polarity of from about 10 to about 45 mN/m;
- the emulsion having a viscosity of from about 700 to about 3,000 mPa s at 100 s⁻¹.

Claims 29-36 depend directly or indirectly from claim 29.

Claim 46 recites:

46. A process for making a cosmetic or dermatological cleansing emulsion, which process comprises combining

- (a) from 2 % to about 17 % by weight of at least one of sodium laureth sulfate and sodium myreth sulfate;
 - (b) from about 0.20 % to about 0.74 % by weight of one or more polyacrylates selected from anionic homopolymers and anionic copolymers of at least one of acrylic acid, an alkylated acrylic acid and esters thereof;
 - (c) from 42 % to about 51% by weight of an oil phase comprising
 - (i) from about 25 % to about 50 % by weight of a paraffin oil,
 - (ii) from about 0.5 % to about 25 % by weight of one or more oils having a polarity of from about 5 to about 50 mN/m;
- to form an emulsion having a viscosity of from about 500 to about 3,500 mPa s at 100 s⁻¹.

The rejection of claims 17 and 33 as obvious over US 5,720,961 Fowler (of record) in view of US 5,977,039 Gordon (of record) and US 7,488,471 Mercier and further in view of McLaughlin (of record) **is withdrawn** as unnecessary and duplicative.

The rejection of claims 6 and 30 as being unpatentable over Fowler in view of Gordon in view of US 5585104 (Ha) **is withdrawn** as redundant.

Claim Objections

Claims 1, 28, and 46 are objected to because of the following informalities: The claims have the recitation: “a polarity of from about ... to about ... mN/m.” The recited values and units are for interfacial tension, not polarity, as described in the specification at [0037] and [0038]. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 8, 10, 14, and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically the claims recite the phrase “at least about.”

Claims 4, 11, and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically the claims recite the phrase “not more than about.”

Claims 23-24 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically the claims recite the phrase “greater than about.”

In each of these instances the phrase has a limit term (a pivot point) and a variability term (i.e., about) which changes the limit term. It is indefinite what is meant as the boundary of the claim. That is, the reader seeking to practice the invention or seeking to avoid infringing the invention would not be able to determine the scope of the claims, because the specification does not define the term "about."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The examiner suggests that the level of skill in the art is commensurate with the level of skill of the inventors or authors of the cited art.

In the Office Action having a notification date of 01/31/2011, the rejection of claims 1-29, 31-47, and 48 over the art of record was “maintained.” The examiner asserts that the statement could reasonably be taken to mean that the recited claims were rejected over the art of record for the reasons of record, and that the art and reasons of record should be applied to all these claims. Indeed the Applicant understood the rejection in this manner.

The rejection of claims 1–16, 18-32, 34-37, and 40-48 as unpatentable over US 5,720,961 Fowler (of record) in view of US 5,977,039 Gordon (of record) and US 7,488,471 Mercier (of record) **is maintained** and restated. Applicant’s arguments and remarks are discussed below.

Claims 17 and 33 are rejected over Fowler in view of Gordon further in view of Mercier, because as identified below, Gordon discloses formulations having soybean oil.

As implicit above, **claims 6 and 30** are rejected and/or the rejection is maintained over Fowler in view of Gordon further in view of Mercier, because as identified below, Fowler discloses a surfactant class that includes sodium myreth sulfate.

Disclosure of the Prior Art

Fowler teaches a **personal care cleansing composition** comprising (a) 0.1 to 20% of insoluble particles, (b) **0.05 to about 40% of a surfactant** selected from **anionic**, cationic amphoteric, nonionic, and zwitterionic surfactants, and mixtures thereof, from **0 to 50% of an emollient**, and from 20 to 99.85% water. Abstract, column 2 lines 34-48, and the claims). Examples of anionic surfactants are **alkyl ether sulfates** of the formula $RO(C_2H_4O)_xSO_3M$ where **R is an alkyl with 10 to 30 carbon atoms**, and x is from 1 to about 10 (e.g. sodium laureth sulfate, sodium myreth sulfate). Column 7 lines 27-45, column 10 lines 23-33, and Example 3. Examples of **emollients** **include lipid materials**, polar lipids, silicones and hydrocarbons **such as mineral oil**, petrolatum, isopropyl palmitate, isopropyl myristate, lanolin, fatty alcohol esters, alcohol sorbitan esters, etc. Column 10 lines 35-67, column 11, and column 12 lines 1-67. The emollients are believed to provide a cleansing benefit by acting as a solvent to help dissolve oils and other oily debris during the cleansing process. Column 10 lines 35-42. The compositions can include additional materials such as actives (e.g. antiperspirants, antimicrobials, etc.), **thickeners**, etc. Column 13 lines 19-42. Examples of **thickeners** **include acrylate/C10-30 alkyl acrylate crosspolymers in the amount of 0.20%**. Column 13 lines 49-53 and Example 2. The cleanser can be prepared into a variety of forms including **emulsions**, creams, gels, bars, foams, mousses, lathers, etc. Column 2 lines 48-55 and the Examples. Examples 2, 3 and 5 utilize mineral oil, fatty alcohols, cetyl alcohol, and acrylate cross polymer (thickener).

Fowler also teaches **methods of personal cleansing** comprising applying the composition to the skin or hair to be cleansed. Column 14 lines 34-55.

Gordon teaches **personal care cleansing compositions** comprising a **cleansing and moisturizing liquid composition** comprising a moisturizing phase (i.e. silicone oils, mineral oil, vegetable oil, mixtures etc.) and an aqueous phase comprising **surfactants** (i.e. **anionic**, cationic, nonionic, mixtures). Abstract, column 7 lines 32-60, and claim 1. The cleansing and moisturizing composition has a **viscosity of from about 500cps to about 60,000 cps (e.g. 500 mPa to 60,000 mPa)**. Column 8 lines 18-25. Polymeric thickeners may also be included. Column 9 lines 7-30. In a table in column 10, Gordon teaches a formulation having **soybean oil**. At lines 55-66.

Mercier teaches a cosmetic or pharmaceutical **emulsion** comprising **oil phase**, **aqueous phase**, and **emulsifying system**. Abstract. **Polymeric additives** can be incorporated into the aqueous phase of the emulsion in order to achieve desired viscosity or gel consistency. Column 4 lines 41-43. In general, a greater amount of polymeric additive will result in a greater viscosity. Column 4 lines 60-61. Examples include **acrylate polymers in an amount ranging from 0.1 to 2.5% of the composition**. Column 4 lines 48-61. Mercier also discloses **that the oil phase can be 30-70 wt.%** of the emulsion and can have two or more lipophilic components, such as triglyceride oil, fatty alcohols, and fatty acid esters. Column 3, lines 38-65.

Ascertainment of the difference between the prior art and the claims
(MPEP 2141.02)

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Fowler does not teach the instantly claimed viscosity range (i.e. 500 to 3,500mPa s). Gordon teaches a personal care composition having the claimed viscosity.

Fowler teaches the use of polymeric thickeners but does not teach the instantly claimed amount of 0.2 to 0.74 % by weight. Mercier teaches cosmetic emulsions having the claimed amount of acrylate polymer.

With regard to claims 17 and 33, Gordon discloses formulations using soybean oil, which is not specifically disclosed in Fowler.

Thus, these deficiencies are cured by the teachings of Gordon and Mercier

**Finding of prima facie obviousness
Rationale and Motivation (MPEP 2142-2143)**

One of ordinary skill in the art would have been motivated to make the instant composition with a viscosity in the range of 500 to 3,500 mPa s because Fowler teaches that personal care compositions can contain a polymeric thickener (as disclosed in Example 2). It is known in the art that polymeric thickeners are added to the composition in an amount ranging from 0.1 to 2.5% by weight in order to modify the composition to the desired viscosity, as suggested by Gordon and Mercier. Further, it is known in the art that cleansing compositions containing polymeric thickeners can be prepared with a viscosity ranging from 500cps to about 60,000 cps (e.g. 500 mPa s to 60,000 mPa s), as suggested by Gordon.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the instant composition with a viscosity in the range of 500 to 3,500 mPa s because it is an obvious viscosity range that can be used in personal cleansing compositions. Further, it is merely routine optimization for one of ordinary skill in the art to vary the viscosity of the composition, depending on the desired properties of the final product.

It is noted that Fowler does not teach each specifically claimed amount of paraffin oil and polar oils. However, Fowler does suggest that the emollient phase can be present in an amount up to 50% by weight and can contain polar lipids, nonpolar lipid material, and mixtures. Further, Fowler exemplifies the use of both polar (i.e. cetyl alcohol, stearyl alcohol) and a paraffin oil (i.e. mineral oil) in Example 5. Also, Mercier

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teaches using a combination of oils. Thus, it would have been obvious to one of ordinary skill in the art to utilize paraffin oil and polar oils in the amount instantly claimed and it is merely routine optimization for one of ordinary skill in the art to vary the amounts each oil present in order to achieve the most stable and effective composition.

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the instant composition.

Response to Applicant's Remarks

In a Response dated April 20, 2010, the Applicant begins by reciting the elements of claim 1. *At* pages 2-3.

The Applicant remarks that Fowler discloses hundreds of surfactants and types of surfactants and emollients and types of emollients which are suitable for use in the disclosed compositions. *At* page 3, paragraph 3. The Applicant further remarks that these components could give rise to millions of possible combinations of surfactants and emollients. *At* page 4, paragraph 1. The Applicant then remarks that thickeners are optional components in Fowler's compositions. *Id.* Then the Applicant argues that Fowler does not render it obvious to employ the specific combination of these components, let alone in the recited weight percentages.

Unfortunately, the Applicant has misstated the rejection. The relevant claims were rejected over the combination of the disclosures of Fowler, Gordon, and Mercier, as understood by one of ordinary skill in the art, not over the disclosure of Fowler

standing by itself. [Consider using FP 07-37-13 for piecemeal analysis] For at least this reason, the Applicant's argument is not persuasive.

The Applicant next argues that the fact that a claimed species or subgenus is encompassed by a prior art genus is not sufficient by itself to establish a *prima facie* case of obviousness. Citing *In re Baird*, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994); *In re Jones*, 21 USPQ2d 1941, 1943 (Fed. Cir. 1992); *In re Deuel*, 34 USPQ2d 1210, 1215 (Fed. Cir. 1995); and the MPEP 2144.08.

The examiner's rationale for combining the references has been provided in past Actions and is also provided above. Moreover, the Applicant is not claiming a single species or narrow subgenus, but a broad formulation that includes broad ranges of four different components. That is, the sodium laureth sulfate and/or sodium myreth sulfate has over an eight-fold range. The polyacrylate range extends over more than three-fold. The paraffin oil has a two-fold range and the oil of element (c)(ii) has a 50-fold range. Furthermore, other unnamed constituents are not excluded because the claim is in "open" form.

Moreover, the law suggested by the Applicant as applicable is reinterpreted by *KSR v. Teleflex*. 550 U.S. 398 (2007). In particular, *KSR* identifies that combining prior art elements according to known methods to yield predictable results can be obvious under 35 USC 103(a). In the instant application, Applicants have combined surfactant, oil, water, and polymer thickener, all of which are constituents of known cleansing emulsions (see, e.g., the cited art), to make a cleansing emulsion having properties that have not been distinguished from those of prior art cleansing emulsions.

KSR also identifies that a simple substitution of one known element for another to obtain predictable results can be obvious. Here, Applicants have substituted a mixture of paraffin oil and other oil, e.g., vegetable oil, to obtain a cleansing emulsion having properties of prior art cleansing emulsions.

KSR also states that choosing from a finite number of identified, predictable solutions with a reasonable expectation of success is obvious to try. In the instant invention as claimed, Applicants have tried substituting a mixture of oils in particular amounts or proportions for a single oil or mixture of unspecified proportions to achieve a cleansing emulsion having properties similar to known cleansing emulsions.

With these considerations of law and fact in mind, the Applicant's above argument is not persuasive. On the basis of any one, or several, of the above rationales, it would have been obvious for one of ordinary skill in the art to have prepared the cleansing emulsions as instantly claimed. Moreover, the use of such emulsions would also have been obvious.

In addition, *KSR* is not limited to the predictable arts. *In re Kubin*, 561 F.3d 1351 (Fed. Cir. 2009). Formulation of cleansing emulsions may be an unpredictable art, but the determination of obviousness as stated by the Supreme Court in *KSR* still applies.

Next, the Applicant asserts that the lack of a teaching or suggestion of the instantly claimed composition is illustrated by the Examples found in Fowler. At page 4, paragraph 3 to page 7, paragraph 3.

As an initial comment, the rejection was not based on the exemplified formulations, but on what one of ordinary skill in the art would find obvious to do with the disclosure.

More specifically, the Applicant asserts that elements (B1), (D), (E1), and (G) are not found in Fowler.

In contrast, support for the rejection of Element B1 is found at column 2, e.g. line 42.

Support for the rejection of Elements D and E1 is found at column 2, e.g. line 46.

Support for the rejection of Element G is found in Gordon. See above.

This aspect of the Applicant's argument is not persuasive.

Then, the Applicant asserts that Examples 2, 3, and 5 of Fowler have large amounts of water. *At* page 5, paragraphs 4-5.

Again, the rejection was not made over Fowler, and not over Fowler's examples, but over how the ordinarily skilled artisan would use the combined disclosures of Fowler, Gordon, and Mercier. Furthermore, if the unrecited residual material in claim 1 were water, the amount of water would also be a large amount: about 32-55%. Claims 47 and 48 specify the amount of water, which in claim 48 is at least 40%. The examiner is not persuaded that the artisan would not have found it obvious to make a formulation having the claimed water content on the basis of the disclosure of the cited art.

The Response remarks that Fowler mentions emulsions only as one of several forms in which the skin cleansing compositions can be made and exemplifies an emulsion composition only once. *At* page 5, paragraph 6.

The examiner is content that Fowler positively asserts that emulsions are a suitable form for the disclosed compositions.

The Applicant reiterates an argument regarding element B1. *At* page 5, paragraph 7.

The examiner's position with regard to element B1 is provided above.

The Applicant asserts that Fowler does not mention sodium myreth sulfate. *At* page 6, paragraphs 1-2.

In contrast, Fowler very clearly discloses that the surfactant can be sodium myreth sulfate. Column 7, lines 27 to 32.

In paragraph 2 on page 6, the Applicant again relies on an example from Fowler to suggest that Fowler prefers small amounts of sodium laureth sulfate and further suggests that ethoxylated emulsifiers may be irritating to skin and eyes.

The Applicant's logic is not convincing because the rejection was based on the combined disclosures of Fowler, Gordon, and Mercier (not Fowler alone) as understood by one of ordinary skill in the art.

The Applicant next argues that Fowler prefers relatively high water content. *At* page 6, paragraph 3.

Except for claims 47 and 48, the Applicant is arguing an unclaimed element. Although claim 1, for example, is directed to an emulsion and less than 100 % of the total mass is recited in the claim elements, the claim is not limited to a water-oil emulsion and is not so construed.

On page 6, paragraph 4 and page 7, paragraph 1, the Applicant remarks that Fowler's emollients can include polar lipids, silicones, hydrocarbons [presumably the Applicant means in addition to paraffin oil], and solvents. Also, that the total concentration of all types of emollients in the compositions is considerably lower than 42 wt. %.

The examiner concurs that Fowler discloses a variety of lipids, but it does not follow that the ordinarily skilled artisan, familiar with Fowler, Gordon, Mercier, and the ordinary knowledge of the art would not have found it obvious to prepare a cleansing emulsion as instantly claimed. Examiner notes that Fowler discloses the amount of the oil phase and the constituents of the oil phase. In the absence of any unexpected results, adjusting the relative amounts of the constituent oils (paraffin oil and vegetable triglycerides/ fatty acid esters, which are exemplary oils having polarity from 5 to 50 mN/m) is a routine part of optimization of the composition.

The Applicant argues that Fowler exemplifies a formulation having only a small percentage of paraffin oil, in Example 5. At page 7, paragraph 2. Also that the total amount of oils in Example 5 is outside the instantly claimed range.

The Applicant is again arguing based on one of Fowler's exemplified formulations, rather than on the totality of the disclosures of Fowler, Gordon, and Mercier. The argument continues to be nonpersuasive.

Next the Applicant points out that the thickener is optional in Fowler's disclosure, no concentration range is provided, only one Fowler example uses thickener, the amount of exemplified thickener is within the range recited in instant claim 1, the

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composition of this Example 2 includes 86 wt. % water and no sodium laureth sulfate, sodium myreth sulfate or mineral oil, and that cetyl alcohol is present in Example 2 within the range claimed in instant claim 1.

These arguments add nothing to the above arguments and remarks, because the Applicant is only arguing from one of Fowler's exemplified formulations. The examiner has not suggested that the instant claims are anticipated by Fowler, but rather that one of ordinary skill in the art, familiar with the disclosures of Fowler, Gordon, and Mercier, would have found it obvious to prepare the formulations.

The Applicant states that Gordon and Mercier do not cure the deficiencies in Fowler. *At* page 7, paragraph 4 to page 8, paragraph 5.

The disclosures of Gordon and Mercier, and how they complement the disclosure of Fowler, is explained above.

The examiner further notes that the Applicant has attempted to assert subtle perceived differences in the composition of the claimed formulation as compared to the cited art, but has not addressed what is unusually favorable, delightfully surprising, or notably unexpected about the instantly claimed formulations. For this additional reason, the Applicant's arguments and remarks are not persuasive.

Conclusion

Claims 1-37 and 40-48 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THOR B. NIELSEN whose telephone number is

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(571)270-3476. The examiner can normally be reached on Monday through Friday from 9:00 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Thor Nielsen
Patent Examiner
AU 1616

/JAMES H. ALSTRUM-ACEVEDO/

Primary Examiner, Art Unit 1616